IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

WEDNESDAY, THE 10TH JANUARY 2007 / 20TH PAUSHA 1928

OP.No. 15270 of 1998(P)

PETITIONER:

J. BHAVANI PILLAI, ADDITIONAL SALES TAX OFFICER,
PALAI, KOTTAYAM DISTRICT.

BY ADV. SRI.V.P.SUKUMAR

RESPONDENTS:

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1. THE COMMISSIONER OF COMMERCIAL TAXES,
THIRUVANANTHAPURAM.

2. THE SECRETARY TO GOVERNMENT, TAXES (D) DEPARTMENT,
SECRETARIAT, THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER SRI. SURARSHAN

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 10/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PETITIONER'S EXHIBITS:

EXT.P1 TRUE COPY OF JUDOGMENT DT. 3-2-97 IN O.P.NO.987/87.

EXT.P2 MEMO OF CHARGES DT. 14-3-1996.

EXT.P3 REPLY DT. 12-4-1996.

EXT.P4 ORDER DT. 14-2-1997.

EXT.P5 APPEAL DT. 2-3-1997.

EXT.P6 NOTE DT. 9-9-1997.

EXT.P7 ORDER DT. 10-11-1997.

[TRUE COPY]

P.S TO JUDGE.

S. Siri Jagan, J.

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O.P. No. 15270 of 1998

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Dated this, the 10th January, 2007.

J U D G M E N T

Disciplinary proceedings were initiated against the petitioner, while working as Agricultural Income-tax Officer, Changanacherry during the year 1995-1996, for not completing the assessment in respect of the assessee M/s. Moosavannan Rawther and Company in spite of specific direction issued by the superior officer in this regard. Assessments were originally completed in the name of Sri. Joseph Jose who filed O.P.No. 987/1987 before this Court against the said assessment contending that he had not taken the property on lease as alleged and therefore the income from the rubber trees in the land stated to be taken on lease cannot be assessed at his hands. He sought an opportunity to cross examine the lessor to prove his case. By Ext. P1 judgment dated 3-2-1987 in that original petition, this Court directed that the assessee shall be given an opportunity to cross examine the lessor. In the meanwhile, the Appellate Assistant Commissioner, Income-tax and Sales-tax, Kottayam also passed similar orders as per his appellate order dated 31-1-1992 in the appeal filed by the assessee against the disputed assessments. Accordingly, the assessment files came up before the then Agricultural Income-tax Officer, who was the predecessor of the petitioner, who issued summons to the lessor and the lessee of the land. But the parties did not turn up together and therefore cross examination could not be conducted. These developments took place before the petitioner took charge as Agricultural Income-tax Officer of that office on 25-5-1995. After the petitioner assumed charge, she also issued summons to the lessor and the lessee twice. On both occasions, the lessee turned up but the lessor did not. In view of the fact that as per the judgment of this Court the petitioner was bound to give an opportunity to the lessee to cross examine the lessor, the

petitioner could not complete the assessment. Although the Agricultural Income-tax Act, 1991 provided that the assessing authority had all the powers of a civil court to enforce attendance of witnesses, no rule or procedure was prescribed for issuing warrant of arrest to enforce the attendance of the witness. Therefore, the petitioner sought the advice of the Inspecting Assistant Commissioner, AIT & ST, who advised to issue warrant to the lessor. The petitioner did not know how the warrant could be issued and enforced. Therefore, she personally visited the Munsiff and Magistrate, Changanacherry in order to ascertain whether she had the authority to issue warrant, but she was advised by them that she is incompetent to issue warrant in the absence of procedure prescribed thereof under the Agricultural Income-tax Act or Rules.

2. In the meanwhile, the assessment for the year 1986-1987 of the same assessee was also set aside on the same ground and the assessing authority was directed to complete the assessment after affording an opportunity to the assessee to cross examine the very same lessor. However, in view of the difficult situation in which the petitioner was placed in, she could not complete the assessment of the lessee as she did not know how to enforce the attendance of the lessor to permit the assessee to cross examine him and no body could also guide her properly in the matter. In the above circumstances, by Ext. P2 memo of charges, the Board of Revenue initiated disciplinary proceedings against the petitioner for not completing the remanded assessments of Sri. Joseph Jose from 1986-1987, which were pending finalisation for the previous four years despite specific instructions dated 25-9-1994 from the Board. Although the petitioner took charge of the office only on 25-5-1995, Ext. P2 memo of charges and statement of allegations enclosed therewith proceeded on the premise

that the petitioner was responsible for the entire delay from 1992. The petitioner contends that even the communication dated 25-10-1994 was received in the office only seven months before the petitioner took charge in the office. The petitioner filed Ext. P3 reply dated 12-4-1996 detailing all the circumstances. However, an enquiry was ordered against the petitioner, which was conducted by the Secretary (Taxes-II). Thereafter, the petitioner received an order dated 14-2-1997 imposing on the petitioner the punishment of barring of two increments with cumulative effect The said order is produced as Ext. P4. Petitioner's appeal against Ext. P4 was dismissed by Ext. P7 order upholding Ext. P4 order. The petitioner is challenging Exts. P4 and P7 orders in this original petition .

3. I have heard learned counsel for the petitioner as also learned Government Pleader. Although, a counter affidavit has been filed by the 2nd respondent supporting Exts. P4 and P7, learned Government Pleader could not, with any amount of conviction, satisfy me that the petitioner could be in any way blamed for the non-completion of the assessment of the assessee in question. The respondents do not dispute the fact that the petitioner had in fact issued notices to the lessor several times and had also sought advice of not only the Inspecting Assistant Commissioner, but also the Munsiff and Magistrate as to how the warrant of arrest could be effected on the witness in question. The advice given to her was that she could not issue a warrant in the absence of procedure prescribed under the Agricultural Income-tax or the Rules. No explanation is coming forth as to why the Government could not come to the assistance of the petitioner because the machinery for enforcing attendance of witness by issuing warrant of arrest is exclusively within the control of the Government. As such, I am not satisfied that

she could be blamed for the non-completion of the assessment since she could have done that only after complying with the directions to permit the assessee to cross examine the lessor, which she could not do because of circumstances beyond her control which has been sufficiently and satisfactorily explained by the petitioner before the disciplinary authority and the enquiry authority. That being so, I am more than satisfied that the petitioner could not have been found guilty of the misconduct alleged against her. I therefore find that the findings entered into in Exts. P4 and P7 are perverse and liable to be interfered with by this Court .

Accordingly, I quash Exts. P4 and P7 and hold that the petitioner cannot be mulcted with the liability for the alleged misconduct against her. As a result, the increments withheld as punishment imposed on the petitioner would be released to the petitioner forthwith. Arrears in this regard shall be paid to the petitioner within two months from the date of receipt of a copy of this judgment. The original petition is allowed as above.

Sd/- S. Siri Jagan, Judge.

Tds/